

07-1475 (PR)

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

Case Number: _____
 Cr. No. 3:97-cr-00074-DRD-6

UNITED STATES OF AMERICA

v.

Ronald Barrios-Garcia

Name of Movant (name under which convicted)

Reg. No. 14937-069

Prisoner No.

FCC-Coleman Medium, P.O. Box 1032Coleman, Florida 33521-1032

Place of Confinement

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 U.S. DISTRICT COURT
 SAN JUAN, P.R.

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
 SENTENCE BY A PERSON IN FEDERAL CUSTODY**

1. Name and location of court which entered the judgment of conviction under attack United States
District Court for the District of Puerto Rico
2. Date of judgment of conviction May 12, 2006
3. Length of sentence 276 Months
4. Nature of offense involved (all counts) 21 U.S.C. §846, Conspiracy to distribute
Narcotics.
5. What was your plea? (Check one)
 - (a) Not guilty ☐
 - (b) Guilty ☒
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:

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6. If you pleaded not guilty, what kind of trial did you have? (Check one)
- (a) Jury ☐
- (b) Judge only ☐
7. Did you testify at the trial?
- Yes ☐ No ☒
8. Did you appeal from the judgment of conviction?
- Yes ☐ No ☒
9. If you did appeal, answer the following:
- (a) Name of court _____
- (b) Result _____
- (c) Date of result _____
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?
- Yes ☐ No ☒
11. If your answer to 10 was "yes", give the following information:
- (a) 1. Name of court _____
2. Nature of proceeding _____
- _____
3. Grounds raised _____
- _____
- _____
4. Did you receive an evidentiary hearing on your petition, application or motion?
- Yes ☐ No ☐
5. Result _____
6. Date of result _____
- (b) As to any second petition, application or motion give the same information:
1. Name of court _____
2. Nature of proceeding _____
- _____
3. Grounds raised _____
- _____
- _____

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self - incrimination.

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- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Violation of Movant's Due Process Rights Under the U.S.

Constitution.

Supporting FACTS (state *briefly* without citing cases or law) _____

See Attached Memorandum of Law

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

D. Ground four: _____

Supporting FACTS (state briefly without citing cases or law) _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what ground were not so presented, and give your reasons for not presenting them:

The due process violation was not found out about until the Bureau of Prisons
calculated the Movant's Sentence, and did so contrary to this Court's Order.

14. Do you have any petition or appeal now pending in any court, as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein: * Because this is a matter in regards to Movant's resentencing, only that attorney is listed herein.

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing ^{re:} David Roman, attorney at law, [CJA]

(e) On appeal _____

(f) In any post - conviction proceeding _____

(g) On appeal from any adverse ruling in a post - conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

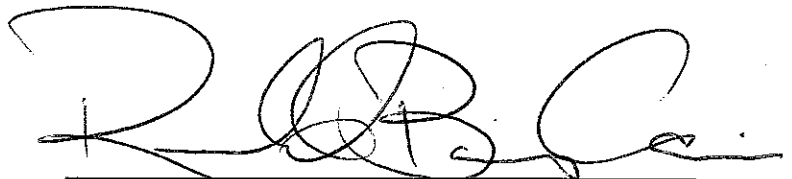
Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

May 25, 2007

(date)



Signature of Movant

Movant's motion is timely filed because, although he was resentenced on May 12, 2007, Movant did not file a notice of appeal, therefore there is a 10 day grace period (excluding weekends and holidays) for his 1 year time limitation period to begin under the IEDPA, which would give him until May 26, 2007 to timely file this §2255 motion. Movant further declares that on May 25, 2007, he placed this motion into the hands of prison officials, by depositing it in the U.S. Mailbox with first class postage affixed thereto, and it is deemed filed this day (May 25, 2007) in accordance with Houston v. Lack, 487 U.S. 266 (1988). (MAILBOX RULE).